

# UNITED STATES DISTRICT COURT

for the

Martin Stephen Gottesfeld  
 Petitioner

v.

Case No. \_\_\_\_\_

(Supplied by Clerk of Court)

U.S. DISTRICT COURT  
DISTRICT OF MASS.

2018 FEB 26 PM 1:03

FILED  
IN CLERKS OFFICE

John Gibbons  
 Respondent

(name of warden or authorized person having custody of petitioner)

## PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

### Personal Information

1. (a) Your full name: Martin Stephen Gottesfeld
- (b) Other names you have used: \_\_\_\_\_
2. Place of confinement: \_\_\_\_\_
  - (a) Name of institution: The Plymouth County Correctional Facility
  - (b) Address: 26 Long Pond Road  
Plymouth, MA 02360
  - (c) Your identification number: 71225
3. Are you currently being held on orders by:
 

☒ Federal authorities
☐ State authorities
☐ Other - explain: \_\_\_\_\_
4. Are you currently:
 

☒ A pretrial detainee (waiting for trial on criminal charges)

☐ Serving a sentence (incarceration, parole, probation, etc.) after having been convicted of a crime

If you are currently serving a sentence, provide:

(a) Name and location of court that sentenced you: \_\_\_\_\_

(b) Docket number of criminal case: \_\_\_\_\_

(c) Date of sentencing: \_\_\_\_\_

☐ Being held on an immigration charge

☐ Other (explain): \_\_\_\_\_

### Decision or Action You Are Challenging

5. What are you challenging in this petition:
 

☐ How your sentence is being carried out, calculated, or credited by prison or parole authorities (for example, revocation or calculation of good time credits)

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- ☒ Pretrial detention  
☐ Immigration detention  
☐ Detainer  
☐ The validity of your conviction or sentence as imposed (for example, sentence beyond the statutory maximum or improperly calculated under the sentencing guidelines)  
☐ Disciplinary proceedings  
☐ Other (explain): \_\_\_\_\_

6. Provide more information about the decision or action you are challenging:

(a) Name and location of the agency or court:

United States District Court, 1  
Courthouse Way, Boston MA 02210

(b) Docket number, case number, or opinion number:

1:16-cr-10305-NMG

(c) Decision or action you are challenging (for disciplinary proceedings, specify the penalties imposed):

Arrest Warrant Issue, Detention Order, Indictment

(d) Date of the decision or action:

Filing Dates: 2/16/16, 7/27/16, 10/19/16 respectively**Your Earlier Challenges of the Decision or Action**7. **First appeal**

Did you appeal the decision, file a grievance, or seek an administrative remedy?

☐ Yes ☒ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: \_\_\_\_\_

(2) Date of filing: \_\_\_\_\_

(3) Docket number, case number, or opinion number: \_\_\_\_\_

(4) Result: \_\_\_\_\_

(5) Date of result: \_\_\_\_\_

(6) Issues raised: \_\_\_\_\_

(b) If you answered "No," explain why you did not appeal:

Told that I cannot do so pro se  
because I have appointed counsel8. **Second appeal**

After the first appeal, did you file a second appeal to a higher authority, agency, or court?

☐ Yes ☐ No

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(a) If "Yes," provide:

(1) Name of the authority, agency, or court: \_\_\_\_\_

(2) Date of filing: \_\_\_\_\_

(3) Docket number, case number, or opinion number: \_\_\_\_\_

(4) Result: \_\_\_\_\_

(5) Date of result: \_\_\_\_\_

(6) Issues raised: \_\_\_\_\_

(b) If you answered "No," explain why you did not file a second appeal: \_\_\_\_\_

9. **Third appeal**

After the second appeal, did you file a third appeal to a higher authority, agency, or court?

☐ Yes☐ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: \_\_\_\_\_

(2) Date of filing: \_\_\_\_\_

(3) Docket number, case number, or opinion number: \_\_\_\_\_

(4) Result: \_\_\_\_\_

(5) Date of result: \_\_\_\_\_

(6) Issues raised: \_\_\_\_\_

(b) If you answered "No," explain why you did not file a third appeal: \_\_\_\_\_

10. **Motion under 28 U.S.C. § 2255**

In this petition, are you challenging the validity of your conviction or sentence as imposed?

☐ Yes☒ No

If "Yes," answer the following:

(a) Have you already filed a motion under 28 U.S.C. § 2255 that challenged this conviction or sentence?

☐ Yes☐ No

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If "Yes," provide:

(1) Name of court: \_\_\_\_\_

(2) Case number: \_\_\_\_\_

(3) Date of filing: \_\_\_\_\_

(4) Result: \_\_\_\_\_

(5) Date of result: \_\_\_\_\_

(6) Issues raised: \_\_\_\_\_

- (b) Have you ever filed a motion in a United States Court of Appeals under 28 U.S.C. § 2244(b)(3)(A), seeking permission to file a second or successive Section 2255 motion to challenge this conviction or sentence?

☐ Yes☐ No

If "Yes," provide:

(1) Name of court: \_\_\_\_\_

(2) Case number: \_\_\_\_\_

(3) Date of filing: \_\_\_\_\_

(4) Result: \_\_\_\_\_

(5) Date of result: \_\_\_\_\_

(6) Issues raised: \_\_\_\_\_

- (c) Explain why the remedy under 28 U.S.C. § 2255 is inadequate or ineffective to challenge your conviction or sentence: \_\_\_\_\_

# 11. Appeals of immigration proceedings

Does this case concern immigration proceedings?

☐ Yes☒ No

If "Yes," provide:

- (a) Date you were taken into immigration custody: \_\_\_\_\_

- (b) Date of the removal or reinstatement order: \_\_\_\_\_

- (c) Did you file an appeal with the Board of Immigration Appeals?

☐ Yes☐ No



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If "Yes," provide:

(1) Date of filing: \_\_\_\_\_

(2) Case number: \_\_\_\_\_

(3) Result: \_\_\_\_\_

(4) Date of result: \_\_\_\_\_

(5) Issues raised: \_\_\_\_\_

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(d) Did you appeal the decision to the United States Court of Appeals?

☐ Yes☐ No

If "Yes," provide:

(1) Name of court: \_\_\_\_\_

(2) Date of filing: \_\_\_\_\_

(3) Case number: \_\_\_\_\_

(4) Result: \_\_\_\_\_

(5) Date of result: \_\_\_\_\_

(6) Issues raised: \_\_\_\_\_

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12. **Other appeals**

Other than the appeals you listed above, have you filed any other petition, application, or motion about the issues raised in this petition?

☐ Yes☒ No

If "Yes," provide:

(a) Kind of petition, motion, or application: \_\_\_\_\_

(b) Name of the authority, agency, or court: \_\_\_\_\_

(c) Date of filing: \_\_\_\_\_

(d) Docket number, case number, or opinion number: \_\_\_\_\_

(e) Result: \_\_\_\_\_

(f) Date of result: \_\_\_\_\_

(g) Issues raised: \_\_\_\_\_

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### Grounds for Your Challenge in This Petition

13. State every ground (reason) that supports your claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in a separate memorandum.

**GROUND ONE:** I was not indicted within 30 days of my arrest, initial appearance or even detention order.

(a) Supporting facts (Be brief. Do not cite cases or law.):

I was arrested February, 2016. I had my initial appearance in the district after more than a month outside the district in April, 2016. My detention order was entered in July, 2016. I was not indicted until October, 2016. IP extensions were sought, they were not docketed.

(b) Did you present Ground One in all appeals that were available to you?

☐ Yes

☐ No

**GROUND TWO:** The magistrate who issued the search warrant and detention order is not neutral and detached.

(a) Supporting facts (Be brief. Do not cite cases or law.):

She worked for Harvard Medical School and is married to one of its professors, who is also a paid practitioner at a Harvard hospital. Alleged victim Boston Children's Hospital is a Harvard medical institution, and lawyer is alleged to other unnamed "Harvard hospitals." She also sat on the board of a foundation which donates to another alleged victim, Weymouth. She has recused in other cases involving Boston Children's.

(b) Did you present Ground Two in all appeals that were available to you?

☐ Yes

☐ No

**GROUND THREE:** The government lied and materially omitted facts on its applications for the criminal complaint, search warrant and per register/stop and frisk.

(a) Supporting facts (Be brief. Do not cite cases or law.):

The YouTube video which they say calls for attacks on the hospital website in fact does not. They omitted the danger to another person's life expressed in the video and its legitimate 1st Amendment claim. In the PRTT application, they claimed CPP and TCP post numbers are not content, but they are.

(b) Did you present Ground Three in all appeals that were available to you?

☐ Yes

☐ No

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**GROUND FOUR:**

The law I am charged under does not provide sufficient notice of what is and is not criminal activity.

(a) Supporting facts (Be brief. Do not cite cases or law.):

The Computer Fraud And Abuse Act does not meaningfully define "authorization" and its definitions of "damage" and "protected computer" are so ambiguous as to render them arbitrary and useless. For example, in its definition of "damage," available to whom in what fashion, etc.? Would a backup tape mean the availability of the data is still intact?

(b) Did you present Ground Four in all appeals that were available to you?

☐ Yes☐ No

14. If there are any grounds that you did not present in all appeals that were available to you, explain why you did not:

**Request for Relief**

15. State exactly what you want the court to do:

Dismiss the indictment with prejudice or vacate the detention order and require the setting of terms and conditions of bail.



Grand Five: The charges against me are an attempt to criminalize protected political speech.

(c): The accusations against me most closely resemble taking part in a sit-in, albeit digitally. I am not accused of obtaining access to anyone else's computer systems, bypassing passwords or other security barriers or of any criminal financial transactions. Transmitting information that is neither intended nor actually does bypass security barriers and is sent for political purposes - especially over the public Internet - is protected speech.



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**Declaration Under Penalty Of Perjury**

If you are incarcerated, on what date did you place this petition in the prison mail system:

Friday, February 23rd, 2018

I declare under penalty of perjury that I am the petitioner, I have read this petition or had it read to me, and the information in this petition is true and correct. I understand that a false statement of a material fact may serve as the basis for prosecution for perjury.

Date:

2/23/18



*Signature of Petitioner*

*Signature of Attorney or other authorized person, if any*